STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Nancy J. Pearne, Trustee, **& Elizabeth Pearne,** Petitioners-Appellants, v. **Dallas County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 10-25-0712** **Parcel No. 16-13-402-015**

On March 26, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Nancy J. Pearne, Trustee, and Elizabeth Pearne were represented by attorney Dennis P. Ogden of Belin McCormick, P.C., Des Moines, Iowa, and submitted evidence in support of their appeal. The Dallas County Board of Review designated attorney Brett Ryan of Watson & Ryan, PLC, Council Bluffs, Iowa, as its counsel and submitted evidence in support of its decision. The hearing for this appeal was consolidated with the 2011 assessment appeal for the same property. That assessment is addressed in a separate order. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Nancy J. Pearne, Trustee, and Elizabeth Pearne (Pearnes) are owners of property located at 6240 Mills Civic Parkway, Clive, Iowa. They appeal from the Dallas County Board of Review decision reassessing their property. The real estate was classified commercial for the January 1, 2010, assessment and valued at $1,889,530; representing $1,054,160 in land value and $835,370 in improvement value. This was the same assessment as January 1, 2009. Pearnes protested to the Board of Review on the ground that there was a change in value since the last reassessment under Iowa Code section 441.37(1) and 441.35. The Board of Review denied the protest.

Pearnes then appealed to this Board on the same ground. They value the property at $1,400,000, allocated $1,054,160 to land value and $345,840 to improvement value.

The subject property is a 5866 square-foot, franchise restaurant with a 738 square-foot, covered, outdoor patio area built in 2007. It is located at the intersection of Mills Civic Parkway and Stagecoach Drive in West Des Moines, and is part of the Galleria at Jordan Creek Development. This development is a 700,000 square-foot community shopping district located along Mills Civic Parkway between 60th and 68th Streets. The improvements are in normal condition and have 2% physical depreciation. The site is 1.210 acres with 30,000 square feet of asphalt paving. The Pearnes purchased the property in 2006 for the purpose of building an O'Charley's restaurant at the site. In early 2007, Four Star Restaurant Group, LLC, leased the vacant land from Pearnes and erected the restaurant. Four Star then transferred the building to Beverly Devin and entered into a net lease agreement. O'Charley's opened for business in May 2007. The restaurant eventually failed and closed in November 2009, without giving notice to Pearnes. As of the January 1, 2010 assessment date, the property was vacant.

As additional background information regarding the property, but not wholly pertinent to the 2010 assessment date at issue, this Board notes a new lease for the property did not occur until September 2011, when Bang Bang Mongolian Grill, a local start-up restaurant, entered into an agreement with Devin and Pearnes. (Exhibits 30, 35). The new 2011 lease has a much lower base rent and shorter term than the initial lease for the property when it was operating as O'Charley's.

Nancy Pearne testified that she purchased the land in 2006 (Exhibit 24) and transferred it to O'Charley's, LLC, a corporation she formed for that purpose, in August 2010. She testified the rent income from the property decreased steadily from 2007 to 2009 (Exhibit 32). Pearne reported that in January 2010, the subject property was vacant with no prospect of a tenant and was generating no rent.

Additionally, she had to pay the property taxes on the subject property. She indicated the property was re-leased in March 2010; however, no rent was received from February 2009 until September 1, 2011.

Pearne provided profit and loss statements for calendar years 2007 through 2010 (Exhibit 32) showing a decline in revenue and increase in expenses. The loss of rental income caused by the vacancy and arrears rent in 2009, coupled with the Pearnes' assumption of real estate taxes[1] on the subject property, resulted in losses in 2009 and 2010. We note the figures provided account for the ground lease payments only, and do not include the building lease payments paid to Devin, thus they are unsuitable for comparison in an income approach to valuation.

In further support of their claim, Pearnes also submitted an appraisal[2] completed by Fred H. Lock and Tasha K. Gould[3] of Iowa Appraisal and Research Corporation, Des Moines, Iowa. Lock also testified at hearing. The Lock appraisal establishes reconciled fee simple market values for the subject property for both January 1, 2009, and January 1, 2010, after considering all three approaches: cost, sales comparison, and income. He concludes the subject property suffered a decline in value between January 1, 2009, and January 1, 2010.[4] His values are as follows:

	2009 Value	2010 Value
Cost Approach	$2,140,000	$2,140,000
Sales Comparison Approach	$1,470,000	$1,440,000
Income Approach	$1,470,000	$1,420,000
Reconciled Value	$1,470,000	$1,430,000

The appraisal notes that "new construction in the [subject's] neighborhood has slowed recently due to the national recession. With the recent development of West Glen Town Center and the Village of Ponderosa there is an oversupply of office and retail development, some of which has been vacant for over a year." (Lock Appraisal p. 13). It states further that, "the area [is expected] to remain

[1] The Profit & Loss statements indicate $36,073 in property taxes were paid in 2009 and $69,529 were paid in 2010.
[2] The Lock and Gould appraisal is hereafter referenced as Lock's appraisal.
[3] Robert D. Blincow was also identified as an appraiser on another version of the report included in the certified record.
[4] A separate appraisal for the 2011 assessment indicates the property then increased in value between the period of January 1, 2010, and January 1, 2011.

desirable for residential and commercial uses for the foreseeable future. [However,] In the near term we expect the office and residential values to remain depressed as the inventory of existing developments gets absorbed." (Lock Appraisal p. 14).

Lock's Cost Approach

Lock developed the cost approach to value and determined a value of $2,140,000 (rounded) for both the 2009 and 2010 assessment years. Lock stated the effective age of the property was 2 years, with a remaining economic life of 43 years. He valued the land for both years at $1,090,000 based on six land sales, which all occurred on Mills Civic Parkway in West Des Moines. Two sales occurred in 2005, three in 2006, and one in 2008. Lock testified he was unable to locate any more recent, comparable land sales. The price per square foot of the sales ranged from $18.28 to $20.66. The sales appear quite similar in size to the subject property. Adjustments were made for "market conditions" or the time of sale, as well as location and size. The appraisal concludes an adjusted land value per square foot for the subject property ranging from $19.44 to $20.66. He then reconciled to the high end of the range at $20.66 because the subject property's corner site at the entrance to the Galleria community shopping center. He valued the land at $1,090,000.

Lock valued the improvements at $1,099,516 using *Marshall Valuation Service* and then applied 4.4% for physical depreciation, resulting in a depreciated cost of $1,050,649. He also indicated his belief that the improvement suffers from obsolescence since his conclusion of replacement cost is not supported by the sales and income approaches. Therefore, he considers this in the reconciliation of the valuation methods, and ultimately, gave little to no weight to this value.

Lock completed the cost approach in a similar manner for the January 1, 2010 valuation and concluded there had been no appreciation in land values since January 1, 2009 and base costs were also unchanged.

Lock's Sales Approach

In the sales comparison or market approach to value, Lock used four sales of restaurants in Clive, Urbandale, and West Des Moines that ranged in size from 4968 square feet to 6631 square feet. The sales prices ranged from $1,145,000 to $1,200,000 or $180.97 per square foot to $230.48 per square foot, and occurred between October 2004 and August 2007. Adjustments were made for market conditions, location, age/condition, quality/design, and land-to-building ratio.

The appraisal notes that Sales 3 (1310 NW 118th Street, Clive) and 4 (4810 NW 86th Street, Urbandale) sold with leases in place but no adjustments were required because they were "at market level." Lock testified that the leased-fee properties, however, typically sold for higher value than fee simple properties. The appraisal also indicates it was difficult to determine appropriate adjustments for market conditions. Because market conditions could not be extracted from comparable sales, Lock considered and observed the increasing capitalization rates (cap rate). The appraisal reports increased cap rates from 2007 to 2009 indicating an 8.28% decrease in value, which was likely due to increased risk caused by changing economic and credit conditions for full service restaurants. Based on his observations of the cap rate, he translated this information into market condition adjustments. The adjusted indicated value for the subject property then ranged from $226.91 to $252.44 per square foot. Lock concluded a value of $250 per square foot for a total value of $1,470,000 (rounded).

For the January 1, 2010, valuation, Lock made the same adjustments to the four sales used for the 2009 valuation with an additional adjustment for market conditions for 2010. Lock used these same sales because no new comparable sales occurred. He justified the additional market conditions adjustment by stating that "based on national cap rate survey data reviewed in the January 1, 2010, income approach, we estimate that cap rates have risen 16 basis points since the beginning of 2009, equating to a ±2% decline value." (Lock Appraisal p. 47). The appraisal further indicates this decline is supported by local market data. As an example, the appraisal lists that Sale 1 (1238 8th Street, West

Des Moines), which sold in August 2007 for $1,200,000, is now listed on the market for $1,050,000, as of May 2010; a 12.5% decrease. The appraisal also notes the final sales price of this property will likely be lower than the asking price, with which we would tend to agree since rarely do sales occur at list price. Finally, Lock estimates a 3% decline per year in the subject property value between 2009 and 2010 to $245 per square foot or $1,440,000 (rounded).

Lock concludes a $30,000 decrease in the subject property from January 1, 2009, to January 1, 2010, using the sales approach.

<u>Lock's Income Approach</u>

In the income approach to value, Lock estimated the market rent using six leases of property in West Des Moines, Ankeny, and Des Moines. Estimated market rent assumed the tenant pays all expenses except miscellaneous landlord expenses, a replacement reserve, and leasing costs. The rates were adjusted for market conditions, location, size, tenant improvement allowance, and land/building ratio. The adjusted leases rates ranged from $18.74 per square foot to $28.59 per square foot. Market rates were then adjusted for vacancy allowance at 5%. Lock arrived at this figure because although there has been a steady decrease in occupancy in the subject property's submarket, he predicts the subject will experience a vacancy rate below that indicated by the survey due to its excellent location and visibility on a corner site. Adjustments were also made for collection loss, management fees, leasing fee, and replacement reserves to determine a net operating income of $135,430.

Lock then determined a cap rate to apply to the net operating income. He attempted to extract a cap rate from local sales. The sales were somewhat dated, however, occurring in 2005 and 2007, and no newer sales were available to provide the information. He then considered a cap rates from surveys published in RealtyRates.com. Lock concluded all of the cap rates available would have to be adjusted upward to reflect current market conditions. However, from the range available, he noted a cap rate at the lower end of the range was appropriate for the subject property because of its location. Ultimately, he concluded a 9.19% cap. When applied to the net operating income the income approach indicated a value of $1,470,000 (rounded) as of January 1, 2009.

The 2010 income approach was developed in a similar manner to the 2009 valuation. Except, based on survey reports that cap rates increased between the first quarter of 2009 and the first quarter of 2010 for full service restaurants from 13.11% to 13.26 %, Lock increased the cap rate to 9.34% for the 2010 estimated value. This adjustment to the cap rate yielded a value of $1,420,000 as of January 1, 2010.

Lock testified the decline in the subject property's value between 2009 and 2010 was because of an increase in cap rates. He based his cap rates on national surveys of full service restaurants and his experience locally, adjusted for market conditions.

In determining a reconciled value for the subject property for both years, Lock gave minimal consideration to the cost approach. He indicated his reason for doing so was that despite the property being new, the cost approach was trending higher than the other two approaches "indicating that restaurant development on the subject site has obsolescence or is not financially feasible due to the high value of the land unless built for a national tenant." Giving weight to the sales comparison and income cap approaches, the appraiser concluded a final reconciled value of $1,470,000 as of January 1, 2009. They concluded a final reconciled value of $1,430,000 as of January 1, 2010, a $40,000 decrease in value.

The Board of Review submits the assessment for 2010 is excessive; however, it contends there has been no downward change in value between 2009 and 2010 to warrant a reduction in the subject property's assessment. In support of its position that there has been no such downward change, it submitted an appraisal[5] completed by Gene F. Nelson and Ranney Ramsey of Nelsen Appraisal Associates, Inc., Urbandale, Iowa. Ranney Ramsey also testified on behalf of the Board of Review.

[5] This appraisal is hereafter referenced as the Ramsey appraisal.

Ramsey valued the subject property at $1,550,000 as of January 1, 2009, and $1,600,000 as of January 1, 2010. Like Lock, Ramsey completed all three approaches to value. However, Ramsey found the subject property had *increased* in value during the time in question. His conclusions and reconciled values are as follows:

	2009 Value	2010 Value
Cost Approach	$ 1,550,000	$ 1,600,000
Sales Comparisons Approach	$ 1,550,000	$ 1,650,000
Income Approach	$ 1,500,000	$ 1,630,000
Reconciled	$ 1,525,000	$ 1,625,000

Like Lock, Ramsey reported the subject property is located on Mills Civic Parkway near Interstate-35 and Interstate-80, an emerging dominant retail area in the Des Moines metropolitan area. He further notes the property's proximity to the Jordan Creek super-regional mall, Wells Fargo corporate campus, Aviva Insurance headquarters, Super-Target, Wal-Mart Super Center, and another power center on the Mills Civic Parkway corridor, as well as several new national chain hotels. Ramsey states the area is a relatively affluent trade area based on median household incomes, has forecasted growth of about 2-3% per year from 2010 to 2015, and average net worth. Ramsey indicates the Restaurant Performance Index demonstrated a pattern of steep decline beginning in mid-to-late 2007 and continuing to January 2009 followed by a pattern of increases continuing into the middle of 2011.

Ramsey's Cost Approach

Ramsey developed the cost approach to value and determined a value of $1,550,000 for 2009. He valued the land at $810,000 based on five land sales on Mills Civic Parkway in West Des Moines. All five of these land sales were also used by Lock in his appraisal. Ramsey adjusted the sale prices, and then concluded a most likely value of $20 per square foot for the property. This was the same per-square-foot value Lock concluded. Ramsey, however, further reduced this value due to the decline in land values by using adjusted cost multipliers to reflect what he considered "holding periods" in the market. Ramsey testified that national surveys indicated a slump in restaurant sales between 2008 and 2010, with some improvement in 2011. He reported the local market may be saturated with restaurants and that there is no immediate need for land. Because of this, there are no recent land sales and a holding period would be likely. Therefore, land purchases would be speculative and buyers would want more discounting. Essentially, Ramsey discounted the land value based on speculation. He testified he had the benefit of looking at the property retrospectively to determine this and it was based largely on his opinion. For 2009, he applied a multiplier of 0.772 to reflect three years of holding time. His land value conclusion was $810,000 (rounded).

The improvements were valued using *Marshall Valuation Service*, similar to Lock's appraisal. Ramsey determined an effective age of 2 years for 2009 and a remaining economic life of 53 years. Ramsey valued the improvements at $746,231 using Marshall Valuation Service after deductions of 3.6% for physical depreciation for 2009.

Ramsey completed the cost approach in a similar manner for the January 1, 2010, valuation using an effective age of 2.5 years with 4.5% physical depreciation for 2010 and discounted the square foot price for market conditions at 8% for 2 years (0.842 multiplier). These adjustments resulted in a site value of $885,000 (rounded) and a depreciated replacement cost of improvements of $723,903. Indicated market value for the subject property as of January 1, 2010, was $1,600,000 by the cost approach.

<u>Ramsey's Sales Approach</u>

In the sales comparison approach, Ramsey examined both leased-fee and fee simple sales.[6] He noted that most fee-simple sales from one restaurant to another tended to be older transactions involving older facilities. He was concerned relying only on these results "could bias the result downward." (Ramsey Appraisal p. 67). Therefore, Ramsey determined it was also appropriate to

[6] We note several places in the appraisal reference the local sales as leased-fee transactions as well as fee-simple transactions.

consider leased-fee sales. He contend that if the terms of the lease at the time of sale produce an income similar to the income of the property at market conditions and if the terms of the lease are similar to those that would exist in an open and competitive market, the transactions can be useful. However, he also pointed out that "the leased fee interest may have guarantees and provisions that provide financial benefits that are above and beyond the fee simple . . . [and] could bias the results upward." (Ramsey Appraisal p. 67). Ramsey testified that properties subject to leased-fee have an assured income stream and higher values than those of fee simple properties, which are typically older, have lower values. He also noted the ability of the tenant to pay rent determines value with national chains having greater ability to pay. He testified the leased-fee properties sold for higher value than fee simple properties.

For 2009 and 2010, Ramsey identified four sales in Clive and West Des Moines. Three of the properties were local restaurants, which represented the oldest sales from 2003 to 2005, and appear to be the fee-simple sales; the other sale was a chain restaurant that sold in January 2008 as a leased-fee transaction. Two of the fee-simple sales were the same as those used by Lock (11407 Forest Avenue, Clive and 1310 NW 118th Street, Clive). Overall sale prices ranged from $1,150,000 to $1,801,980, or $138.60 to $205.44 per square foot. Ramsey adjusted the sale prices for market conditions, location, age/condition, and land to building ratio. Additionally, the leased fee sale was adjusted based on its relative net operating income (NOI) per square foot as compared to the subject property. Adjusted sale prices of the fee simple sales range from $146 per square foot to $267 per square foot. The adjusted sales price of the leased fee sale applicable to the 2009 assessment was $324 per square foot. From the range of values, he chose a square foot price of $265 and opined a value of $1,550,000 as of January 1, 2009, using the sales approach to valuation.

For the 2010 valuation, Ramsey used the same sales information, but based on his examination of the market, he concluded the sales all needed an upward adjustment. This resulted in new value of

$280 per square foot, from a fee-simple range of $168 to $298 per square foot and $307 per square foot for leased-fee property. This information suggested the leased-fee properties, which were adjusted based on estimated NOI suffered a decline in value; but the fee-simple values were not impacted by such a decline and instead increased. Based on these factors, Ramsey opined a value of $1,650,000 (rounded) as of January 1, 2010, using the sales approach to valuation.

Ramsey's Income Approach

The 2009 income approach was developed using an estimated market rent of $28.75 per square foot, effective gross income of $160,216 after vacancy and collection loss, and net operating income of $153,650 after management fee, replacement reserves, and other operating expenses. After considering three local sales, mortgage-equity technique, as well as a national survey, Ramsey chose an overall cap rate of 10.19%. We note the sales he used to extract a cap rate were all leased-fee properties and two occurred after both the 2009 and 2010 assessment dates. Ramsey also recognized the use of these sales would likely lower the cap rate and increase the value. Based on these figures, the appraisers arrived at an indicated market value using the income approach for January 1, 2009 was $1,500,000.

The 2010 income approach was developed using an estimated market rent of $27.25 per square foot, effective gross income of $151,857 after vacancy and collection loss, and net operating income of $145,541 after management fee, replacement reserves, and other operating expenses. After considering the same cap rate information as previously noted, Ramsey chose an overall cap rate of 8.91%. The indicated market value using the income approach for January 1, 2010, was $1,630,000.

Ramsey's appraisal notes his belief that the subject property should lease above the market range of $22.29 per square foot to $25.30 per square foot and below the range of $28.31 per square foot to $34.10 per square foot. The rental income for 2009 was $12,704, while the estimated market rent would yield rental income of $168,648 under a triple-net lease. We note it appears strange that between 2009 and 2010 Ramsey shows NOI decreasing yet also lowers the cap rate, indicating less risk in the market. More than likely, a decreasing NOI would correlate with and increasing cap rate.

In reconciling his approaches, Ramsey found the income and cost approaches to value most reliable. He found the sales approach the least reliable because of the difficulty of obtaining sales that were recent, comparable, and directly indicative of the fee simple value of the subject property. He concluded a final value of $1,525,000 for January 1, 2009 and $1,625,000 as of January 1, 2010.

As a preliminary observation, we note that neither of the appraisals supports the January 1, 2010, assessment. Lock's final fair market valuation was $1,430,000 and Ramsey opined a final fair market valuation of $1,625,000, whereas, the assessed value was $1,889,530 as of January 1, 2010. The Board of Review concedes on this point. Based on the two appraisals, the subject property's value changed from 2009 to 2010; however, the Pearnes contend that value decreased, whereas the Board of Review contends the value increased.

We find the appraisers are all qualified, experienced, and knowledgeable. Furthermore, we find the appraisers both utilized essentially the same sales and income information to establish their values. Thus, the main difference between the two was their own opinions of the market and their determination and application of cap rates.

The Board of Review attempted to question Lock's credibility by asking him if when he was commissioned to complete the appraisal whether he was informed the taxpayer's appeal was based on a change in value. Lock confirmed he was notified of this. However, we do not find this makes his appraisal unreliable. We note the Board of Review's own appraisal was only commissioned after it failed in its attempt to have the Pearnes' relief be limited by the amount shown in Lock's appraisal. Additionally, Ramsey testified he also had knowledge when he completed the assignment that the issue was a change in valuation. We will not infer a bias in either appraisal when both were commissioned by the opposing parties for ad valorem tax purposes. If we would adopt the Board of Review's argument, a similar bias could also be inferred in Ramsey's appraisal.

Neither Pearnes' nor the Board of Review's appraisers were able to find land sales or improved sales after 2007. Lock noted survey results for full service restaurants, nationally and in Dallas County, showed increasing cap rates throughout the valuation period and the accompanying decrease in market rents result in lower property values from January 1, 2009, to January 1, 2010. Ramsey's own information also tended to show a contraction in the restaurant industry. Ramsey's appraisal, however, has the overall cap rate decreasing from 2009 to 2010, thus showing an increase in market value. But, the *Price Waterhouse Coopers* survey in Ramsey's appraisal has both the overall cap rate average and the exit cap rate average increasing between 2009 and 2010. Additionally, an Iowa Department of Revenue survey noted in Ramsey's appraisal also shows a 1% decline in restaurant retail sales in Dallas County for the period. Despite these facts, Ramsey opined a large decrease in cap rate, thus resulting in a market value increase from 2009 to 2010.

Both experts recognized the retail sales transactions had decreased from the end of 2007 to the end of 2008. Ramsey indicated rates remained low to attract buyers and that this trend did not reverse itself until sometime in 2010 when transaction volumes for net leased properties began to increase due to these lower interest rates. He noted that despite discount rates declining from 2009 to 2010, overall cap rates were increasing for retail properties, thus indicating lower values. However, his conclusion indicates the contrary for full service restaurants. Ramsey was also of the opinion that purchaser of land in the area during 2009 and 2010 would anticipate holding land through 2011 before building and operating a restaurant because of depressed market conditions. While a "holding period" is speculative, taken with the rest of the evidence, these findings seem to contradict Ramsey's $100,000 increase in value between 2009 and 2010, while supporting the decline in value found by Lock.

Furthermore, although the Board of Review finds fault with several items in Lock's appraisal (that he did not personally inspect all comparables; making a 1% adjustment in land/building ratio for one year; etc.) we do not find these issues, when considered as a whole, weaken Lock's credibility or the reliability of his appraisal.

Ramsey's appraisal fails to convince this Board that his determination of value accurately reflects the market value for the subject property as of the assessment dates. We find Lock's appraisal is more reliable. Although Lock testified he placed primary, or even total, reliance on a national survey to determine a prevailing cap rate, it appears clear to this Board that local market data was lacking to determine a reliable local cap rate for the subject property. In addition, Lock did not just adopt the national cap rate, but instead used the information to adjust and determine a cap rate for the subject property. The Board of Review contends only Ramsey performed multiple methods to develop the cap rate, and therefore, his appraisal is more reliable. However, a simple review of the appraisals does not support this conclusion. Lock's appraisal shows he attempted to create a market-extracted cap rate using local sales from 2005 to 2007. (Lock Appraisal p. 39). He testified no local sales were available, just as Ramsey admitted. He also considered a debt/equity rate development. (Lock Appraisal p. 40). Furthermore, we note Ramsey's own appraisal shows he considered only one sale prior to the 2009 assessment date that could have been used for a market-extraction method, and this sale was a leased-fee transaction. (Ramsey Appraisal p. 91). He used no other sales prior to the assessment date to support his local extraction method. Also, this one sale was used in Lock's appraisal. Because the sales were limited, and Ramsey's appraisal indicated he placed limited reliance on the sales comparison approach, it does not make sense that he could extrapolate a cap rate from the local market. Additionally, it would appear Ramsey placed just as much reliance on national survey data as Lock. Between 2009 and 2010, the bulk of the national data in both appraisals indicate increasing overall cap rates and supports Lock's use of a higher cap rate in 2010 as compared to 2009, supporting a decline in the market value of the subject property from 2009 to 2010.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed." *Soifer v.*

Floyd County Bd. of Review, 759 N.W.2d 775, 783 (Iowa 2009). "Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference." *Id.* Determining comparability of properties is left to the "sound discretion" of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is "free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value" *Heritage Cablevision*, 457 N.W.2d at 598.

When the assessor has not assessed or reassessed the property or corrected errors appearing in the listing of the property, the only ground upon which a protest can be filed in an interim year is the ground change in value pursuant to Iowa Code section 441.35. Iowa Admin. Code r. 701-71.20(4)(b)(6); *Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614, 617 (Iowa 1996); *Eagle Food Centers, Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). It is the interplay between Iowa Code section 441.37(1) and section 441.35 that give rise to the claim of change in value. *See Eagle*, 497 N.W.2d at 862. Iowa Code section 441.35(3) states that "[i]n any year after the year in which an assessment has been made of all of the real estate in any taxing district, the board of review shall meet as provided in section 441.33, and where the board finds the same has changed in value, the board shall *revalue and reassess* any part or all of the real estate contained in such taxing district, and in such case, the board shall determine the *actual value* as of January 1." The Pearnes' January 1, 2009, assessment and January 1, 2010, assessment were the same. The property was reassessed in January 1, 2009, making 2010 an interim year.

Additionally, in order to show change in value, the Iowa Supreme Court most recently stated that for a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value *cannot* be used for this purpose. *Id.* (emphasis added). *Equitable Life* appears clear: a taxpayer must show a value for the previous year that is not at issue, in this case 2009, and a value for the interim year at issue, 2010. *Id.* The assessed value for 2009 is not the appropriate measure to show change in value. *Id.* What is required is a market value for both years showing a change between those values.

Once a change in value has been proved, the question must turn to the fair market value of the subject property for the interim year. Iowa Code § 441.21.

Viewing the record as a whole, we determine the preponderance of the evidence supports Pearnes' claim of change in value as of January 1, 2010. The ultimate issue between the two appraisals is whether the cap rate was increasing or decreasing. Based on the totality of the evidence, we find Lock's conclusion that the cap rate increased thus causing a decrease in values between 2009 and 2010, is supported by the record.

Therefore, we modify the Pearnes' property assessment as determined by the Board of Review. The Appeal Board determines that the property's assessment as of January 1, 2010, is $1,430,000.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment of the Pearnes' property located in West Des Moines, Iowa, as determined by the Dallas County Board of Review, is modified to $1,430,000.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Dallas County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 24 day of July 2012.

Jacqueline Rypma

Jacqueline Rypma, Presiding Officer

Richard Stradley, Board Chair

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AUDITOR

Certificate of Service
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 7-24, 2012
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature ___